

UIIdaho Law Digital Commons @ UIIdaho Law

Idaho Supreme Court Records & Briefs

1-22-2013

Telford v. Smith County Texas Appellant's Brief Dckt. 39878

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Telford v. Smith County Texas Appellant's Brief Dckt. 39878" (2013). *Idaho Supreme Court Records & Briefs*. 695.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/695

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law.

Case No. 39878-2012

BEFORE THE IDAHO SUPREME COURT

HOLLI TELFORD

Plaintiff/ Appellant

v.

SANDRA COPELAND, ADMITRA MILLS, JEANETTE HARMON,
CODY KELLEY, PAUL KELEY JR., THE ESTATE OF PAUL KELLEY SR;
SMITH COUNTY TRUSTEE; SMITH COUNTY; TAX ASSESSOR GARY
BARBER; ARTIE ROSS; ATTORNEY TAB BEALL; LAW OFFICES OF
PURDUE, BRANDON, FELDER, COLLINS & MOTT; LISA NEILSEN
AND DOES 1 - 10.

Respondents / Appellees

OPENING BRIEF OF APPELANT

DEMAND FOR ORAL ARGUMENT

Holli Telford
10621 S. Old Hwy 191
Malad City, Idaho 83252
208-766-5559
Relator Pro Se

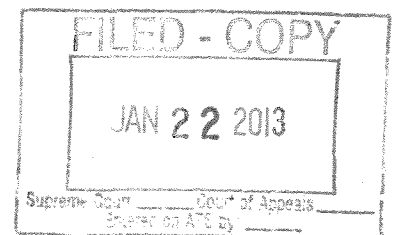


Table of Contents

STATEMENT OF THE CASE	5
I. Nature of the Case	5
II. Course of Proceedings	6
STATEMENT OF FACTS	14
STATEMENT OF ISSUES	29
STANDARDS OF REVIEW	30
JURISDICTION FOR APPEAL	30

Issue No. 1

Whether substituted service of a summons and complaint by certified mail upon the out of state parties in the underlying case under the Idaho Consumer Protection Act's Long Arm service statute, I.C. 48-613, constituted valid service of Process on these defendants so served and commanded the entry of a defaults and default judgments as to these Defendants who failed to appear and defend31

Issue No.2

Whether the commission of an illegal act as proscribed under Idaho's Consumer Practices Act section 48-603 by the out of state seller against TELFORD, a resident of the state of Idaho, automatically granted personal jurisdiction over the seller32

Issue No. 3

Whether TELFORD'S bid contract was formed in the state of Idaho sufficient to invoke personal jurisdiction over all parties to that contract : when TELFORD signed the bid contract in Malad Idaho, TELFORD committed herself to loans and other financial obligations with Idaho lenders to provide consideration for the bid contract; and TELFORD collateralized Idaho personal and real properties to provide securities for the loans serving as consideration for the contract.35

Issue No. 4

Whether equity claims of specific performance and constructive trust may be heard in Idaho courts when pertaining to real estate located outside the state of Idaho - when the fraud or deception practiced by the tortfeasor specifically caused to the equitable claims to arise to the injury of an Idaho resident, here TELFORD38

Issue No. 5

Whether I.C. 19-302 may be used as a jurisdictional statute to invoke personal jurisdiction over non-resident defendants who commit in whole or in part any element of a racketeering predicate act within the state of Idaho.40

Issue No. 6 :

Whether the specially appearing defendants actually made a general appearance in the underlying action because they failed to limit their initial motion to an attack on personal jurisdiction only.43

Issue No. 7

Whether the trial court erred as a matter of law when he entered a final judgment dismissing plaintiff's claims against the specially appearing defendants with prejudice on the grounds of lack of personal jurisdiction, in violation of IRCP rule 41(b)43

Issue No. 8

Whether the trial court erred in not allowing TELFORD to amend her complaint in accordance with the evidence presented before the conclusion of the case.44

CONCLUSION45

CERTIFICATE OF COMPLIANCE45

CERTIFICATE OF SERVICE45

TABLE OF AUTHORITIES

I.C. 13-201.....	30
I.C. 48-603.....	33
Texas Local Government Code § 271.151.160	14 , 15
Texas Property Tax Code. Sec. 34.01.....	15, 17
Texas Tax Code § 11.13	20
Texas Tax Code § 34.21.	15, 17, 20, 22
Texas Tax Code § 34.23(b).....	21
Andre v. Morrow, 680 P.2d 1355; 106 Idaho 455 (Idaho 1984).	38
Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivs. Prop./Cas. Joint Self-Ins. Fund, 212 S.W.3d 320, 327 (Tex. 2006)	14
Deer Creek, Inc. v. Clarendon Hot Springs Ranch, Inc., 107 Idaho 286, 291, 688 P.2d 1191, 1196 (Ct. App. 1984).....	16
Evanston Insurance Company v. Westchester Surplus Lines Insurance Company; Case No. 10-36133 (9th Cir. 2011).....	37
Gates v. Collier, 378 F.2d 888 (9 th Cir. 1967)	35
Idaho v. Doyle, 828 P.2d 1316; 121 Idaho 911 (10, 1992)	39
Mo. Pac. R.R. Co. v. Brownsville Navigation Dist., 453 S.W.2d @ 813 (Tex. 1970).	14
Neal v. Janssen, 270 F.3d 328, 332 (6th Cir. 2001).....	37
Paula Construction, Inc. v. City of Lytle, 220 S.W.3d 16 (Tex.App. Dist. 4 2006).....	14
Pro Axxess Inc. v. Orlux Distribution Inc., Nos. 03-4179 (10th Cir. 2005).....	35
Ray v. Frasure, 200 P.3d 1174, 146 Idaho 625 (ID 2009).....	36
Rynone Mfg. Corp. v. Republic Indus., Inc., 96 S.W.3d @ 640, (Tex. App.-Texarkana 2002.).....	37
Schwarzenegger, 374 F.3d at 802.....	35
Shore v. Peterson, 204 P.3d 1114, 146 Idaho 903 (Idaho 2009).....	16
State v. Barros, 131 Idaho 379, 381, 957 P.2d 1095, 1097 (1998).	30
State v. Clements, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009)	30
State v. Reader's Digest Ass'n 81 Wn.2d 259, 501 P.2d 290 (1972)	32
Taylor v. Phelan, 912 F.2d 429, 433 n.4 (10th Cir. 1990)	37
The City of Houston v. Steve Williams, et al, No. 09-0770 (Tex. 03/18/2011).....	14
Vreeken v. Lockwood Engineering, B.V., 218 P.3d 1150, 148 Idaho 89 (Idaho 2009)	37
Yahoo Inc v. La Ligue Contre Lw Racisme Et L'Antisenitisme, 433 F.3d 1199 (9 th Cir. 2006).....	35

STATEMENT OF THE CASE

I. Nature of the Case

This is an appeal of final orders entered by the trial judge which held that a sales contract for real property located in Smith County Texas could not be enforced, challenged or interpreted in the state of Idaho - irregardless of the profound personal and financial injury resulting to Plaintiff, an Idaho resident, and other Idaho residents who vested monies into the commercial transaction at hand.

Plaintiff maintains that the trial court's ruling with regards to Plaintiff's access to Idaho courts to seek judicial relief from the Defendant's contract breaches, violated I.C. 29-110 which makes void any contract conditions which restrict an Idaho resident from enforcing his rights under the contract in Idaho tribunals.

The Trial Court also failed to conduct any competent analysis under the tortious injury clause of the Idaho Long arm statute as it applied to Plaintiffs Idaho Consumer Protection Act claim - which subsumes personal torts such as conversion, intentional infliction of emotional and mental distress, fraud and deception. The trial court summarily concluded that this cause of action was not a tort claim requiring a tortious injury analysis.

In addition, absolutely no jurisdictional analysis was directed towards plaintiff's RICO cause of action because Plaintiff stated this cause of action under Utah law instead of Idaho law and because there is no personal jurisdictional guideline under Idaho law for RICO acts committed by out of state residents within the 4 corners of the state as there is under federal law.

Furthermore, Plaintiff attempted to amend her underlying complaint when the defendants colluded with Idaho executive officials to criminally prosecute plaintiff's for felony fraud crimes in order to taint the underlying litigation and win by default. The trial court rejected this amendment which would have added additional "personal jurisdictional" credence to Plaintiff's already existing RICO claims.

Last but not least, Plaintiff served the Defendant under Idaho's Consumer Protection Act's long arm service statute. I.C. Section 48-613. The only defendants that appeared in the underlying action, albiet late, were the Smith County defendants, their employees and a Texas lawfirm that was instrumental in converting plaintiff's properties by

authoring a void redemption deed. The remaining defendants were admittedly served under this long arm statute by certified mail, but chose not to appear in the action. Plaintiff filed the required applications for default certificates and default judgments as required under Idaho law, and served these documents upon each of the defaulting defendants. More than one month later, on July 15, 2011, Judge Dunn issued an order finding that because the Consumer Protection Act's long arm service statute did not include the words Summons and complaint in its description of process to be served, the statute was not effective for service of a lawsuit upon the defendants. Accordingly, the court found that Plaintiff had not effected proper service on the non-appearing defendants, and hence refused to enter defaults and default judgments against the remaining "noticed", but non-appearing defendants.

II. Course of Proceedings

The underlying complaint asserts that the Smith County Defendants with the aid of their attorney lawfirm the former defaulting owners, breached a land sales contract for undeveloped property located in Smith County Texas; thereby causing substantial financial and tortious injury to plaintiff in the state of Idaho. Plaintiff also argued an Idaho RICO claim against the defendants for theft by unauthorized transfer, theft by false promise, theft by extortion, and extortion by a public servant. Aff. Telford, para.3, C.R. 138.

Plaintiff caused all defendants to be served the Summons and Complaint under Idaho's long arm service statute, I.C. Section 48-613, based on the inclusion of NOTICE in the text of the statute. The Idaho Supreme Court publishes default papers under its website which mandates the entry of default judgment against a non-appearing Defendant after receiving NOTICE of an action taken against that Defendant. The point here being, the words Summons and Complaint are not included in the body of the FORM default papers published by the Idaho Supreme court. Plaintiff contends that she made proper service on all defendants by serving them by certified mail as permitted by this statute. The specially appearing defendants all admitted that they had been served by certified mail.

When the time expired for responding to Plaintiff's complaint, Plaintiff

demanded default certificates and default judgments be entered against all non-appearing defendants. See C.R. 43 -121 and C.Supp. R. 12-59.

On July 15, 2011, Judge Dunn instructed the clerk not to enter the defaults and default judgments against the non-appearing Defendants because the statute did not include the word summons in its body and therefore Plaintiff was required to employ personal on the out-of-state defendants.

The County defendants and their attorneys and lawfirm in the meantime made a special appearance in the action moving to dismiss plaintiff's claims for lack of personal jurisdiction based on a general contacts analysis with the state. Plaintiff responded indicating that the contacts analysis was specific and in support thereof, Plaintiff provided very inculpatory evidence against the Defendants which she attached to her July 18, 2011 Affidavit. As a matter of course, Plaintiff files her documents with the court clerk and then faxes these documents to the judge for his records as required under IRCP Rule 7.

Immediately after Plaintiff submitted her July 18, 2011 Affidavit to the Defendant's mutual defense firm/counsel colluded with Oneida County executive officials to raid Telford's home on August 10, 2011 in order to seize all of plaintiff's original electronic and paper evidence against these defendants and thereby obstruct proving the underlying action.

Telford filed a verified objection with the court on August 18 2011 indicating that she was demanding from the criminal court the return of all of her electronic and paper records regarding the underlying action. See C.R. 192-260. As exhibit "3" attached to Telford's Verified Objection, C.R. 220-247, Telford provided Judge Dunn with a copy of her mandamus writ directed to the criminal court and demanding the return of all of Telford's electronic and paper evidence seized during the aforesaid illegal search.

On September 1, 2011, plaintiff filed an Opposition to the Defendant's motion to dismiss. Plaintiff argued that the Defendants had made a general appearance by arguing beyond personal jurisdiction issues. For example, the Defendants asked the Judge to dismiss Plaintiff's action entirely with prejudice as barred by the Statute of Frauds because Plaintiff's interest in the Texas property was not committed in writing by delivery of a written Deed. Plaintiff cited to the affidavits of more than 5 affiants including

herself which showed numerous oral promises made by the Defendants ; all of which induced part performance by plaintiff; performances which caused substantial injury to plaintiff and the other affiants supporting Plaintiff's Opposition to the motion to dismiss, sufficient to avoid application of the statute of frauds and to invoke a constructive trust. C.R. 273-277. The Defendants also argued that plaintiff could not sustain an Idaho RICO prosecution against the Defendants because Plaintiff was not a state prosecutor and therefore could not prosecute crimes. Plaintiff cited to US Supreme Court law in re Rotella v. Wood, 528 US 549 (2000) for the legal conclusion by the US Supreme Court that State and Federal RICO statutes allow a private plaintiff to act as a private attorney general and prosecute named crimes protected by the relevant RICO statutes. C.R. 278-279. Finally, the Defendants argued that Plaintiff could not state any variation of a fraud crime against the Defendants or statutory liability claim under the Idaho Consumer Protection Act.

On October 3, 2011, District Judge Dunn entered a decision on the Defendants motion to Dismiss, converting same to a summary judgment motion based on Telford's considerable evidence submitted outside the four corners of the Complaint. **Judge Dunn restricted his decision to the issue of personal jurisdiction rejecting any need to reach the substance of Plaintiff's causes of action.** Judge Dunn's Decision was based largely upon Telford's July 18, 2011 affidavit with attached exhibits sent to Judge Dunn's chambers by fax on August 1, 2011. The Decision is found @ C.R. 300 - 315. Judge Dunn took on the mantle of defendant's attorney and assumed or fabricated facts not in the record.

First, Judge Dunn concluded that the sales contract accepted by Telford was formed in Texas - which was blatantly false given there would have been no contract without Telford's money consideration to form the contract and which monies and Telford's acceptance generated from the state of Idaho.

Second, Judge Dunn concluded that because the property was located in Texas that Telford could not access Idaho courts to seek relief for breaches of the sales contract. This conclusion of law violated I.C. section 29-110.

Third, Judge Dunn argued theories of active and passive websites; an argument never raised by opposing counsel and therefore waived as a matter of law. C.R. 393, sub paragraph 2.

Fourth, Judge Dunn avoided commenting on the more than 9 phone calls, 2 faxes and 6 emails made by Defendants and directed

to Telford in the state of Idaho as shown in C.R. 273, in order to avoid the Defendant's "directed acts" against an Idaho resident.

Furthermore, while Judge Dunn mentioned that Telford improved the property, he did not mention that the actual value of improvements at the time of the October 3, 2011 Decision was at least \$250,000.00 and that these assets, which were collateralized by Idaho and Utah citizens, had been converted by the Defendants - thus adding a new cause of action for constructive trust.

Finally, there was no substantive assessment of plaintiff's causes of actions presented in her complaint.

Immediately after Judge Dunn issued his October 3, 2011 Decision, the Oneida County Prosecutor charged Telford with forgery of Clerk Diane Skidmore's notary onto Telford's affidavit dated July 18, 2011 - in order to defeat the underlying civil litigation by a fabricated fraud charge. In fact, what the Prosecutor had done was seize Telford's original July 18, 2011 affidavit from Telford's abode during the illegal search on August 10, 2011, cut off Diane Skidmore's original notary from Telford's original July 18, 2011 affidavit, drawn down another copy of Holli's draft of her July 18, 2011 Affidavit from Holli's computers which were also seized on August 10, 2011, and taped Diane Skidmore's original notary to the newly drawn draft copy. The Prosecutor then subsequently charged Telford with forging Diane Skidmore's notary to her July 18, 2011 Affidavit and with multiplicitious counts of submitting this false document to various public offices in re Sixth Judicial District of Idaho, Oneida County case no. 2011-CR-958, What the prosecutor did not take into account was that Telford had a common practice of obtaining at least three original notaries on the same document and preserving these originals at various locations for safe keeping. Ultimately Telford would produce another originally notarized July 18, 2011 Affidavit to the criminal court, which resulted in dismissal of all criminal charges with prejudice on April 5, 2012.

In the interim however, **Telford timely moved for rule 11 reconsideration and to take in new evidence of additional Idaho RICO charges of theft by extortion in the illicit use of the Idaho criminal system to defeat Telford's civil claims against the Defendants herein.** C.R. 315-358.

Telford argued that there was no question that the Defendants committed injury within the 4 corners of the state of Idaho sufficient to be held to answer for their tortious and criminal activity in the state of

Idaho by virtue of the pending criminal prosecution. Telford sought to supplement her complaint with these additional RICO allegations in accordance with IRCP rule 15(b).

Telford also argued the laws relating to formation of contracts; all of which concluded that a contract is formed in the state where: (1) the contract is signed (here, the contract being the bid contract constituting acceptance of Smith County's unilateral offer to sell the property to the winning bidder); (2) where the contract is reduced to writing and signed; (3) consideration is provided to support the contract; (4) the offeree accepts the terms of a unilateral offer and performs on those terms; (5) loan obligations are committed to provide consideration for the contract; and (6) communications are directed to firm up the terms of the contract C.R. 318 - 320. In the instant case, all of the contract formation took place in the State of Idaho.

In addition, Telford also raised violations of I.C. 29-110 and the Court's failure to address the tortious injury prong under the Due Process clause of both the Idaho Long arm Statute and the Federal Constitution which placed personal jurisdiction in the forum where Plaintiff alleged the injuries were felt or had an effect. C.R. 317, para. 3, footnote 2. Plaintiff cited to 9th circuit cases holding that personal jurisdiction exists in the forum where plaintiff suffers pecuniary or other personal injury from the defendant's tortious acts. C.R. 336-337. Plaintiff also cited to *Blimka v. MyWeb Wholesaler LLC*, 152 P.3d 594, 143 Idaho 723 (ID 2008) where the Idaho Supreme Court held that personal jurisdiction lied in the state of Idaho **where Blimka was induced to part with funds as a result of the Defendant's fraud.** C.R. 337, footnote 8. As exhibit "3" attached to Telford's rule 11 motion, Telford attached a voice recording of the selling officer Lois Mosley in April of 2011 when Mosley had confirmed that the property was not subject to redemption and that the sale was conclusive and binding.

Finally, Telford sought an analysis of personal jurisdiction under Idaho's RICO act with the last overt act being the corrupt and abusive initiation of criminal process against Telford in Oneida County Idaho.

On February 29, 2012, Judge Dunn completely avoided Telford's petition to augment the underlying case with an abuse of process claim and additional allegations under the Idaho RICO act. Rather Judge Dunn's ruling was solely limited to the purchase transaction itself and the torts present at the time Telford purchased the property, not after when Telford learned about the fraud, conversion and RICO violations. Judge Dunn refused to find personal jurisdiction in the state of Idaho because the transaction involved the purchase of real property in the State of Texas which could not be

physically delivered to Telford in Idaho. C.R. 420, para. 1 :

“ If the real property [sic but] had been portable and Telford had “ taken possession of the property in Idaho, like the purchaser in *Blimka*, then the tort prong of the Idaho Long Arm Statute may have allowed this Court to exercise jurisdiction over the Defendants. However, real property is not portable. Under these circumstances the injury could only be felt in Texas.

Likewise, Judge Dunn concluded that the Due Process clause of the US Constitution barred personal jurisdiction over the defendants in Idaho because Telford could only possess the property in Texas.

On March 15, 2012, plaintiff filed a rule 60(b)(3) motion to vacate the February 29, 2012 ruling on the grounds that the ruling had not been sent to plaintiff in order to give plaintiff opportunity to object. On March 21, 2012, Judge Dunn gave plaintiff an additional 14 days from the date of March 15, 2012 in which to file an objection to the February 29, 2012 Decision. See C.R. 433, paragraph 5.

On March 27, 2012, Telford filed an affidavit indicating the progress of the February 14, 2012 oral proceedings before the court. In paragraphs 7-8 @ C.R. 437-438, Telford complained that she needed to amend the complaint to state “in state” RICO, abuse of process and conversion claims against the Defendants. Telford specifically attested :

“ I just learned that the Defendants had stolen mine and Ferron “ Stokes manufactured home on the property, all of our construction equipment, and our heavy duty dump trailer – based on opposing counsel's proclamation to the remainder Defendants that Oneida County was prosecuting me for 14 felony counts and that I would therefore not be able to prosecute my claims herein due to likely incarceration in jail. “

Telford argued that the Court was required to hear Telford's new allegations under the doctrine of Merger. In paragraph 11 @ C.R. 438 - 439, Telford further attested:

“ It is undisputed that I argued an Idaho RICO claim back in “ July of 2011 and that the new theft and extortion facts raised at the February 14, 2012 hearing raised additional predicate RICO acts consummated in the state of Idaho (citing fn. 5) and showed continuous racketeering activity.

Telford cited to footnote 5 @ C.R. 439 for the law acquiring personal jurisdiction over the

Defendants under the criminal statutes when an element of a crime is committed within the jurisdiction. TELFORD urged that I.C. 19-302 served as a jurisdictional statute for her RICO claims (C.R. 441) and that the Court failed to conduct any jurisdictional analysis under her RICO causes of action. Telford cited to the affidavits of Ferron Stokes and Mike Slicker C.R. 444 – 448 as containing party opponent admissions that the Texas defendants had illicitly used the criminal process in the state of Idaho as a vehicle to steal plaintiff's properties in the state of Texas as proscribed by Idaho's theft by extortion statute. C.R. 440. In particular, the Slicker affidavit presents party opponent admissions made by the KELLEY defendants who were served with the process herein but never appeared to defend, C.R. 444, para. 5, to wit:

“ I went over to the property with LA Greer and began asking the default “ owners what they were doing with Ms. Telford's properties. The Defaulted Sandra Coleman and the Kelley Family informed us that they had beat Ms. Telford in a lawsuit in Idaho, that they now owned Ms. Telford's properties, and that Ms. Telford was going to jail for a long time. We expressed disbelief and asked where they had removed Ms Telford's properties. They refused to tell us.

On March 28, 2012, Judge Dunn rejected Telford's efforts to supplement additional RICO allegations into the case which accrued after the filing of the initial complaint in April of 2011 - because the Court had decided to dispose the case :

“ based on the pleadings, factually supplemented by affidavits. ”

C.R. 451, paragraph 2. The Court opined that since Telford's supplemental allegations were not presented in the initial complaint, and could not be tried by consent given there was no trial in the case, the court had no duty to allow the additional allegations in by way of amendment of the initial complaint. In addition, the Court re-affirmed that Telford's RICO claims did not create personal jurisdiction in the State of Idaho because the gravamen of the RICO charges dealt with non-portable real property (deferring to the analysis rendered in the court's February 29, 2012 Decision.). C.R. 451- 452.

On April 5, 2012, the felony charges advanced by the defendants herein were dismissed with prejudice. After dismissal of the felony case, the Oneida County prosecutor spoiled or destroyed plaintiff's original evidence against Smith County - to prevent Plaintiff from presenting her evidence at the time of trial in any case.

On April 10, 2012, Telford timely appealed the final rulings in the underlying action. A clerk's record was created by clerk Diane Skidmore on September, 2012. While going through the clerk's certified record, Telford noticed that the exhibits attached to Telford's July 18, 2011 Affidavit had not been included in the clerk's record. Telford filed a motion to augment the trial record. Judge Dunn scheduled a hearing for October 9, 2012. At this hearing, Judge Dunn admitted that the missing exhibits to which Telford referred were attached to the original affidavit submitted by Telford – but set aside in the Court's file. Judge Dunn held that because Telford's original affidavit dated July 18, 2011 did not have a file stamp affixed to this Affidavit, that the Affidavit with attached 11 exhibits could not be included in the clerk's record. Judge Dunn then : (1) instructed Telford to execute another affidavit which attached thereto the exhibits set aside in the court's file, but never officially filed stamped into the record on August 1, 2011; (2) directed the clerk to file stamp Telford's affidavit providing the missing exhibits, pursuant to rule 10; and (3) instructed Telford to move the Idaho Supreme Court to augment the record with her rule 10 affidavit. On October 10, 2012, Telford filed her rule 10 affidavit attaching the missing exhibits.

Telford subsequently moved the Idaho Supreme Court to augment the record with her rule 10 affidavit. Justice Jim Jones was the assigned schedule B justice handling all motions for the court. Justice Jones's long time law clerk Yvonne A. Dunbar had recently joined the defense firm representing the County defendants herein, I.e. the law offices of ANDERSON, JULIAN & HULL LLP. Attorney ADAMS from this lawfirm lied to the Supreme Court when he represented that Judge Dunn never considered the missing exhibits which in fact formed the basis of Judge Dunn's October 3, 2011 Decision. To add insult to injury, Attorney Adams then further denied receiving notice of the October 10, 2012 Affidavit OR Telford's Motion to Augment the record. In response, Telford filed a motion for contempt against opposing counsel and his clients for attempted fraud upon the court and provided electronic copies of her emails upon opposing counsel. Justice Jones improperly summarily denied Telford's motion to augment the record or to find opposing counsel in contempt. By Opposing counsel's misconduct, critical evidentiary documents presented to the trial court are now withheld from this record.

With the foregoing case history, Telford now presents her Statement Of Facts.

Statement Of Facts

The underlying action involves interstate internet sales of distressed properties and landlots by Smith County Texas while acting in a private and commercial capacity.¹

In the instant case, Smith County as the owner of certain undeveloped real property, offered to re-sell this land lot over the internet to any person of interest. Plaintiff accepted the offer at a sum certain price based on the information provided by Smith County over their website. The relevant mandatory procedures that must be utilized by Smith County when selling properties owned by them are as follows:

1. The Texas Legislature has concluded that government units engaging in contractual relations will not be immuned from with liability or suit for breaches in their respective contracts. See **Texas Local Government Code § 271.151.160 et seq.** which prohibits the granting of any immunity from suit to a government unit (or official) entering into a contract. Followed in *Catalina Development, Inc. v. County of El Paso*, 121 S.W.3d 704, 705 (Tex. 2003) ("By entering into a contract, a governmental entity necessarily waives immunity from liability under the sue and be sued clause and voluntarily binds itself like any other party to the terms of an agreement." The government performs a private function when entering into a contract with another person, and therefore no official immunity lies.). See Texas H.B. 2039 codified as Local Government Code §§271.151.160 and providing that "by entering a contract, local governmental entities waive their sovereign immunity to suit for breach of that contract."). See also **Paula Construction, Inc. v. City of Lytle**, 220 S.W.3d 16 (Tex.App. Dist. 4 2006) (The City of Lytle "may sue and be sued, implead and be impleaded, and answer and be answered in any matter in any court or other place." Tex. Loc. Gov't Code Ann. § 51.013 (Vernon 1999). Paula Construction argues on appeal that **the City of Lytle's immunity from suit is waived by the application of the Local Government Code. See Tex. Loc. Gov't Code Ann. § 271.151.160 and 271.152 (Vernon 2005) [Act of June 17, 2005, 79th Leg. R.S., ch. 604, § 1, 2005 Tex. Sess. Law Serv. 1549].** Section 271.152 reads: A local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract waives sovereign immunity to suit for the purpose of adjudicating claims relative to that contract. Moreover, the statute's legislative history indicates that, by enacting section 271.152, the Legislature intended to loosen the immunity bar so "that all local governmental entities that have been given or are given the statutory authority to enter into contracts shall not be immune from suits arising from those contracts." House Comm. on Civil Practices, Bill Analysis, Tex. H.B. 2039, 79th Leg., R.S. (2005) (emphasis added). Followed in **Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivs. Prop./Cas. Joint Self-Ins. Fund**, 212 S.W.3d 320, 327 (Tex. 2006), and **The City of Houston v. Steve Williams, et al**, No. 09-0770 (Tex. 03/18/2011). In 1970, the Texas Supreme Court held that such "sue and be sued" language granted legislative consent for lawsuits. See *Mo. Pac. R.R. Co. v. Brownsville Navigation Dist.*, 453 S.W.2d @ 813 (Tex. 1970). Local Govt Code § 271.151.160.

Texas Property Tax Code. Sec. 34.01. Sale Of Property.

(e) A notice of sale must substantially comply with this subsection. The notice must include:

- (1) a statement of the authority under which the sale is to be made;
- (2) the date, time, and location of the sale; and
- (3) **a brief description of the property to be sold.**

(m) **The officer making the sale shall prepare a deed to the purchaser of real property at the sale,** to any other person whom the purchaser may specify, or to the taxing unit to which the property was bid off.

(n) The deed vests good and perfect title in the purchaser or the purchaser's assigns to the interest owned by the defendant in the property subject to the foreclosure, including the defendant's right to the use and possession of the property, **subject only to the defendant's right of redemption.**

(o) If a bid sufficient to pay the amount specified by Subsection (p) is not received, the officer making the sale, with the consent of the collector who applied for the tax warrant, may offer property seized... to a person for less than that amount .

(q) A sale of property under this section to a purchaser other than a taxing unit:

(1) extinguishes each lien securing payment of the delinquent taxes, penalties, and interest against that property and included in the judgment; and

Texas Tax Code § 34.21. RIGHT OF REDEMPTION provides:

(e) The owner of real property sold at a tax sale other than property that was used as the residence homestead of the owner when the suit or the application for the warrant was filed, may redeem the property in the same manner and by paying the same amounts as prescribed by Subsection (a), (b), (c), or (d), as applicable, except that:

(1) the owner's right of redemption may be exercised not later than the 180th day following the date on which the purchaser's taxing unit's deed is filed for record; and ... redemption fees have been paid to the purchaser.

Pursuant to § 34.01(e)(3), Smith County listed the property as bearing situs address 14811 FM 2661 and sought \$11,320.00 as the opening bid. C.R. 32 ².

Plaintiff Telford examined the Smith County Appraisal Districts Website to verify other specs on the property. Two properties bore the situs address of 14811 FM 2661

2. C.R. ____ stands for Clerk's Record @ page no. of page.

and both of these addresses were listed as belonging to Joseph and Tammy Conflitti. A research of one address bore a land lot with an outshed. The other property bore a sizeable home and acreage. Plaintiff contacted Smith County whom informed plaintiff that the lot with the outshed was the lot up for re-sale. Aff. Telford, para. 5, C.R. 139.

After researching the foregoing property information, Plaintiff contacted Smith County and was directed to first submit a letter of credit to prove her ability to pay for any winning bid. Aff. Telford, para. 7, C.R. 139. Plaintiff did submit this letter of credit to the selling officer Lois Mosley, C. Supp. R 135³, in conjunction with a written bid just above the asking bid price. Lois Mosley also asked Plaintiff to pay a 1/3 cash deposit of her bid price and to send these deposit funds in a cashiers check or wire the funds to Smith County through Smith County's attorneys Linebarger, Goggan, Blair & Sampson, LLP. A deposit amount of \$4,214.77 was wire transferred from Plaintiff's bank to Smith County's lawfirm in March of 2011. C.R. 258-259.

On March 31, 2011, Kim Vogt, a relative of Elham Neilsen, appeared at the County Assessor's office to hear the winning bidders on the offered properties. Telford was the only bidder on the subject property and was declared as the new owner. Aff. Neilsen, para.8,C.R.128; Aff. Vogt, para.4, C.R.134-135; Aff. Telford,para. 11, CR 140

3. The 9th Circuit and Idaho both hold unilateral contracts subject to enforcement. In *Evanston Insurance Company*, supra, the 9th circuit held that "A unilateral contract exists when one party offers to do a certain thing in exchange for the other's performance, and performance by the other party constitutes acceptance and execution of the contract." Here, the fax from Bellevue Master to Northwest on February 22, 2001 was an offer: Northwest would be able to continue working as a subcontractor at the construction project provided it complied with Bellevue Master's insurance requirements. When Northwest contacted its insurance broker and requested that the broker issue the insurance certificate to Bellevue Master, Northwest accepted the unilateral contract, and a contract was thereby formed, executed and subject to enforcement." Idaho also concurs that a unilateral contract will be formed and executed when the offeree performs upon the terms of an offer in *Shore v. Peterson*, 204 P.3d 1114, 146 Idaho 903 (Idaho 2009) ("where the offeror makes a promise that is conditional on the offeree's acceptance, an offeree accepts by rendition of the requested performance."). Also see CORBIN ON CONTRACTS § 21 at 52 (1963) (An offer for a unilateral contract calls for acceptance by rendition of the requested performance.) J. CALAMARI and J.PERILLO, THE LAW OF CONTRACTS § 1-10 (1977). *Deer Creek, Inc. v. Clarendon Hot Springs Ranch, Inc.*, 107 Idaho 286, 291, 688 P.2d 1191, 1196 (Ct. App. 1984).

On April 4, 2011, various Smith County Assessor employees including the selling officer Lois Mosley, called Telford at her place of residence in Idaho no less than three times to inform TELFORD that she had won the bid on the property and seeking to exercise the letter of credit. The phone calls were conferenced by TELFORD to third persons having an interest in improving the property. These calls were also preserved on Telford's magic jack phone and a digital photograph was made of these phone calls. Aff. Telford, para. 9, C.R. 141, Exhibit 3, C.R. 149; Neilsen, para. 9, C.R. 128; and Aff. Greer, para. 7, C.R. 132.

During the phone call with the selling officer Lois Mosley, Ms. Mosley inquired of Telford on how to exercise Telford's letter of credit for the balance of the purchase price. TELFORD instructed Lois that she would need to sign a sealed letter which : (1) announced Telford as the winning bidder; (2) indicated that the sale was conclusive and binding; (3) informed the bank that Smith County was exercising the letter of credit, and; (4) announced that Telford could now possess the property and make improvements thereto. Aff. Telford, para(s) 9 and 11, C.R. 141.

Before executing the foregoing letter, both Lois Mosley and Appellant Holli Telford checked the deeding history to this undeveloped lot - in order to calculate the redemption period set forth in **§ 34.01(n) and § 34.21(e)(1)** and to make sure that the prior defaulted owners could not redeem the subject real property.

This research revealed that two dates were listed for filing the Deed for record as indicated in **§ 34.21(e)(1)** supra and both dates by passed the 180 day period:

First : On August 10, 2010, Smith County foreclosed on the subject real property (formerly owned by the Estate of Paul Kelley Sr. with Sandra Coleman as administrator) as Smith County Texas civil cause no. 22,107-C. On or about **September 10, 2010**, Smith County was given a deed in their favor which Smith County filed of record in Smith County Texas civil cause no. 22,107-C.

Second : On **November 2, 2010**, Smith County attempted to sell the property - but no one submitted a bid and the property was struck off back to Smith County. When this sale failed, Smith County recorded its Deed dated October 12, 2010 with the Smith County Appraisal District.

In addition, a third statute came into play. Specifically :

Texas Tax Code § 34.23(b) provides: “the owner of property sold for taxes to a taxing unit may not redeem the property from the taxing unit *after* the property has been resold.”

Also, Texas Tax Code § **34.05(d)** enhances Texas Tax Code § 34.23(b) in that it provides the following resale restrictions:

The acceptance of a bid by an officer conducting the sale is conclusive and binding. On conclusion of the sale, the officer making the sale shall prepare a deed to the purchaser. The County Clerk shall file and record each deed under this subsection and after recording shall return the deed to the grantee.

These laws were cited by Telford without contest by the Smith County Defendants while the case pended before the trial court. Aff. Telford, para. 10, C.R. 140.

On April 5, 2011, both Telford and the selling officer Lois Mosley concurred that no redemption rights existed for the defaulted owners, and hence, Lois Mosley would be executing the requested letter and directing Smith County's attorneys to approve Mosley's executed Deed and deliver same to Telford. On April 5, 2010, a legal secretary from the law offices of Linebarger, Goggan, Blair & Sampson sent Telford an email indicating that they were mailing to Telford's Idaho address, the original deed to the Smith County property along with a letter confirming purchase of this property so that Telford could present this letter as a bill of sale to an insurance carrier for purposes of insurance. This email communication was attached as exhibit “4” to Telford's July 18, 2011 Affidavit as indicated in paragraph 10 of Telford's Affidavit, C.R. 141. **This email however has been removed from the court's file and Justice Jim Jones refused to supplement this email into the court record subject to Telford's motion to augment the Supreme Court record.**

On April 8, 2011, Lois Mosely did execute an official letter representing to Telford's bank that : (1) Telford was the winning bidder ; (2) the sale was conclusive and binding ; (3) Telford could now possess and occupy the property, (4) Telford could make improvements to the property; (5) the defaulted owners passed the 180 redemption period and therefore could not redeem the property, and (6) since the property had been resold to Telford, the prior owners could not redeem the property

pursuant to Texas Tax Code § 34.23(b). See C.R. 141 @ paragraph 11 which refers to this letter being attached as exhibit "5" to the July 18, 2011 Affidavit of Telford. **This letter however has been removed from the court's file and Justice Jim Jones refused to supplement this letter into the court record subject to Telford's motion to augment the Supreme Court record.** Also see Aff. Neilsen, para. 9, C.R. 128 for reference to this letter.

Shortly after the purchase was finalized and several months after Smith County had negotiated Telford's purchase fees on the property, Telford learned that the property offered by Smith County as previously owned by the Conflittis - was not the property sold to Telford by Smith County ; that **Smith County had errored on the auction listing.** C.R. 141-142. **The Smith county property actually sold to Plaintiff in fact bore no physical address because it had never been designated as a residence address for the prior owner.** The true property was in serious disrepair, had foliage and shrub trees overgrown on the property and had a brick shack which had been badly burned in a fire years before.

Telford, Neilsen, Greer, and Vogt, subsequently appeared at the assessor's office and notified the auction officer Lois Mosley of the true condition of the distressed property. Holli presented Lois Mosley with the auction listing which bore the incorrect address and the Smith County abstract on the distressed property which bore no address. Finally Telford presented Lois Mosley with **Texas Property Tax Code section 34.05(d) which mandated an accurate description on the property being sold.** Lois Mosley instructed Telford to tender a modified bid for the property she purchased - at the value of the property only. Smith County Appraisal District reflected the value of the land at \$4200. Telford did resubmit a modified bid at \$4,200. ⁴ C.R. 24, para.6, and C.R. 34, exhibit "3" attached to complaint. The Court's October 3, 2011 Memorandum decision reflects that Smith County instructed Telford to submit a modified bid at the value of the property - by the following findings of fact found in the October 3, 2011 Decision. C.R.304:

" Plaintiff discovered there was an error in the address on the "

4. Because Holli had already submitted a deposit of \$4,214.77, she had overpaid the sum of \$14.77 which Holli expected to be advanced towards future property taxes if Holli won the bid. C.R. 258 – 259.

property list posted on the website. After Plaintiff advised Smith County of the error she was directed to the property that Smith County actually owned and that she had purchased. The parcel Plaintiff purchased was significantly different than anticipated. Because of this error, the Smith County Tax Assessor's Office allowed Plaintiff to adjust her bid to reflect the value of the correct property. Plaintiff changed her bid to reflect the value of the true property and began to improve the property to suit her intended purposes.

The actual property resold by Smith County to Telford was formerly owned by Paul W. Kelley Sr. who died in 1999. Defendant Sandra Coleman became the administrator of his estate. The Property was never claimed or utilized as a residence homestead within the required meaning of Texas Tax Code § 11.13.⁵ In addition, at the time of the judgment selling the property back to Smith County entered on September 10, 2010 in Smith County case no. 22,107C, the owner Paul Kelly Sr. had been dead for 11 years and the property wasn't occupied, but rather was abandoned. The administrator of the estate, Defendant Coleman, had not paid the property taxes on this property since 2007. The actual tax debt at the time of the re-sale to plaintiff was \$4100. The "residence homestead" status was relevant to the inquiry of when the redemption period on the property began and terminated. According to the Texas redemption statute, this "abandoned property" had to have been used as a residence homestead at the time cause no. 22,107C had been commenced in August of 2010. Since the property was not a residence homestead in August of 2010, the defaulted owners on the property had 180 days following the taxing unit's recordation of their deed in cause no. 22,107C on September 10, 2010 in which to pay the redemption fees, redemption costs plus the redemption premium of 25% to Plaintiff - as the purchaser at the resale auction.⁶

5. Texas Tax Code § 11.13 provides as follows:

(1) "Residence homestead" means a structure ... secured and occupied .. that: (A) is owned by one or more individuals, (8) is ... adapted for human residence; (C) is used as a residence; and (D) is occupied as his principal residence by an owner

6. Texas Tax Code § 34.21. RIGHT OF REDEMPTION reads as follows:

(e) The owner of real property sold at a tax sale other than property that was used as the residence homestead of the owner when the suit or the application for the warrant was filed, may redeem the property in the same manner and by paying the same amounts as prescribed by Subsection (a), (b), (c), or (d), as applicable, except that:

In addition, Telford purchased the property at a re-sale auction given the property was not sold at the first auction conducted on November 2, 2010. Pursuant to Texas Tax Code § 34.23(b) : **"an owner may not redeem property that has been resold by a taxing unit."** Therefore, the re-sale to Telford protected Telford against the redemption rights of the prior owner as a matter of law.

In accordance with Texas Property Tax Code § 34.05(e), the selling officer Lois Mosley had a duty to turn over the deed on the property to Telford⁷, especially after the re-sale which cut off the right to redemption pursuant to § 34.23(b). According to the email sent to Telford on April 5, 2011 by Smith County's attorneys [and now gutted from the record by clerk Diane Skidmoreas stated supra], the lawfirm had indicated that they mailed the Deed to Telford at her Idaho address. Furthermore under the doctrine of partial performance, the resale was binding and could not be revoked.

Telford made substantial improvements to the property once the selling officer confirmed to Telford that the sale was conclusive and binding and that Telford could now

-
- (1) the owner's right of redemption may be exercised not later than the 180th day following the date on which the purchaser's or taxing unit's deed is filed for record; **and** ... redemption fees have been paid to the purchaser.
 - (2) Redemption "Costs" include:
 - (A) the amount reasonably spent by the purchaser maintaining, preserving, and safekeeping the property, including the cost of:
 - (i) property insurance;
 - (ii) repairs or improvements required ... by a lease of the property;
 - (B) Redemption premiums of 25% first year, 50% second year. .

7. Texas Property Tax Code § 34.05: RESALE BY TAXING UNIT, provides in material parts as follows:

- (d) ... **The acceptance of a bid by the officer conducting the sale is conclusive and binding** on the question of its sufficiency.
- (e) **The presiding officer of a taxing unit selling real property ... shall execute a deed to the property conveying to the purchaser the right, title, and interest acquired or held by each taxing unit that was a party to the judgment foreclosing tax liens on the property.** The conveyance shall be made subject to any remaining right of redemption at the time of the sale.

For non-residential property, the redemption right expires 180 days after the Deed is first filed of record. The Deed was filed in Cause no. 22,107C on September 10, 2010.

improve the property and make it into a residential structure. Telford, Stokes and other investment partners improved the property to the tune of \$250,000 by excavating the property, by developing the infrastructure to situate and affix a double wide manufactured home and by moving too and affixing a double-wide manufactured home permanently to the property. During the foregoing development process, Telford also consummated a residential lease with affiant Kim Vogt to cover the debt created by the improvements.

After the foregoing substantial improvements had been made, and while Telford and others were on the property finishing up the improvements, on June 1, 2011 Paul Kelly Jr and Paul Kelly Senior's ex wife appeared at the property to inquire into it's disposition. Telford informed the Kelleys in front of everyone that Telford had purchased the property from Smith County back in March of 2011 and that the property was not subject to redemption based on the passing of the 180 day redemption period and re-sale of the property to Telford.

The Kelleys subsequently left the property and appeared at that the Assessor's office to inquire into how they could void the sale and be unjustly enriched by the over \$250,000 improvements made to the property. The Kelleys promised to pay the County more than three times the sales price paid by TELFORD if the county would revoke the sale. The sales officer Lois Mosley informed the Kelleys that Mosley had not yet delivered the deed to Telford and that failure to deliver the deed could possibly void the sale. Mosley also indicated that there was a problem with the redemption period because the property was not a residential property.⁸ The Kelleys informed Mosley that the property now had a residence on it due to TELFORD's improvements. Mosley instructed the Kelleys to return to the property and take pictures of the residence and the Smith County Assessor's office would extend the redemption period to 2 years as residential

8. Under Texas law to claim a residential property exemption : Texas Tax Code § 34.21(e) requires : **the real property sold at a tax sale must have been "used as the residence homestead of the owner when the suit or the application for the warrant was filed."** Here, the suit for foreclosure on tax liens against the Kelley estate was filed in June of 2010. At that time, there was no residence on the property. Therefore the Kelleys could not claim the 2 year redemption period as a matter of law.

property. The Kellys did return to the property and take pictures of the home while plaintiff's lessee occupied the home. C.R. 137, para. 11. The selling officer never turned the deed over to Telford as required under Texas Tax Code § 34.05(d); thus effectively obstructing the conveyance. C.R. C.R. 27, para. 19.

After numerous demands to turn over the Deed, on June 3, 2011, TELFORD sued Smith County, the Assessor-Collector and a conspiring lawfirm for : (1) specific performance demanding turn over of the Deed; (2) Breach of the covenant of good faith and fair dealing, (3) Violations of the Idaho Consumer Protection Act, and (4) for RICO violations based on RICO acts of false promises and theft by conversion of the Ded promised to TELFORD. C.R. 29, para. 25.

All defendant parties were immediately served under Idaho's Consumer Protection Acts long arm service statute. I.C. 48-613(2). County Judge Joel Baker received service of process for Smith county as their statutory agent. C.R. 103-104.

Attorney Tab Beall and his lawfirm made a special appearance and moved to dismiss Plaintiff's complaint against them based on the claim that the state of Idaho had no general jurisdiction over them because they did not have property in Idaho nor did they do business in the State of Idaho. C. Supp. R. 87-89.

Smith County and the Assessor – Collector separately moved to dismiss the suit because they were a governmental entity residing in Texas and did not exercise any governmental functions in the state of Idaho. C. Supp.R. 117-118. Consequently they too claimed lack of general personal jurisdiction over them.

The Kelley - Coleman defendants did not make any appearances.

Telford responded to the Smith County Defendant's motion to dismiss by asserting that Smith County's status as a governmental entity was not recognized under Texas law because the county was engaging in contracting acts with private parties for goods and services. Accordingly, Telford argued that Smith County was liable for their actions as any other private party would be citing the authority set forth in footnote 1 supra at page 11. Telford further argued that the State of Idaho had specific personal jurisdiction over the County defendants because their illegal acts were knowingly directed at an Idaho resident.

Telford also argued that Beall and his lawfirm were aiding and abetting false

promise, theft by conversion and theft by extortion and therefore were equally liable as the principal for advancing the goals of a civil or criminal conspiracy. Telford asserted that the state of Idaho had specific not general jurisdiction over Beall and his lawfirm in the State of Idaho. C.R. 264-289. C.R. 315-339.

More than 6 weeks after all the defendants in the suit had been served with process and therefore knew the value of the properties they had stolen by failure to deliver the deed to TELFORD, on July 11, 2011, the Kelleys appeared before the Smith County Tax Collector Gary Barber to illegally redeem the property. Gary Barber had been served and had responded to the Idaho lawsuit as above shown, and therefore knew that the Kelleys did not have any redemption rights available to them. Nevertheless, Gary Barber invalidly received significantly insufficient redemption fees in the amount of \$12,608.36 from the Kelleys (under a 2 year redemption theory premised upon a residential property) and without the required affidavit indicating that the Kelleys could not locate TELFORD to settle the amount of redemption fees due TELFORD as the purchaser, as required under Texas law. See Texas Tax Code § 34.21 (f) provides that the owner of the real property must make an affidavit that the owner has made diligent search in the county in which the property is located for the purchaser at the tax sale and has failed to find the purchaser, . . . before the defaulted owner may contact the assessor-collector to pay any redemption fees. Here, the Kelleys knew at all times where they could contact Plaintiff because they had been served with and received notice of the Idaho lawsuit. See C.R. 43-143. Hence if redemption were available, which it was not, the Kelleys redemption was still invalid for failure to tender a valid affidavit explaining their attempts to redeem the property from plaintiff as the purchaser thereto. Moreover, the redemption fees would have cost no less than \$250,000; the amount of monies Telford and others spent to improve the property on behalf of the leasehold contract, plus a 25% redemption fee.

Nevertheless, after Gary Barber illegally accepted these fees, Defendant Barber turned the matter of preparing the Deed over to the lawfirm of Purdue, Brandon, Felter & Mott; the same lawfirm named as a defendant and specially appearing in this underlying Idaho lawsuit, and whom TELFORD charged with conspiracy to commit theft by false promise in failing to deliver the DEED to TELFORD and with theft by

conversion by nullifying TELFORD's entitlement to the DEED.

This defendant lawfirm and specifically Attorney Tab Beall, also named and served as a defendant herein, constructed and authored a void Redemption Deed which purported to convey the subject real property to Paul Kelly Jr., knowing that a constructive trust had been effectively placed on the property by virtue of the massive improvements made to the property before conveyance of the void redemption Deed AND knowing that he was aiding and abetting theft crimes against TELFORD and other Idaho investors. Tab Beall then tendered this void Redemption Deed to County Judge Joel Baker for execution. County Judge Joel Baker was the statutory agent served with Smith County's lawsuit (C.R. 103-104) and therefore had personal knowledge that the Redemption Deed he executed on July 11, 2011 was illegal, void & against public policy.

TELFORD presented this void Redemption to the trial court pre-decision entered on October 3, 2011. Judge Dunn in his October 3, 2011 decision even referred to this redemption deed in his findings of fact, C.R. 304, para. 2 to wit:

“ After Plaintiff incurred substantial costs improving the land, ”
Plaintiff was notified that the former owner had redeemed
the Property and that the Smith County Tax Assessors
Office was revoking the sale.

The Court record now shows an absence of this Redemption Deed from the record which Plaintiff contends was gutted from the court's record.⁹

9. During a rule 10 proceeding conducted by Judge Dunn on October 9, 2012, Judge Dunn admitted that the court file contained an original July 18, 2011 Affidavit with 11 attached exhibits by TELFORD - but because the clerk failed to affix a file stamp to this original record, the Court was not going to include TELFORD original affidavit into the clerk's record on appeal. The Court disregarded Plaintiff's claim that she fax served Judge Dunn with a copy of her original affidavit with all attached exhibits to his chambers on August 1, 2011 as required under rule 7, and that Judge Dunn must have considered his chambers copy because Judge Dunn made no mention of missing exhibits from Plaintiff's July 18, 2011 Affidavit in his October 3, 2011 Decision, which fact findings were almost entirely predicated on TELFORD's July 18, 2011 Affidavit. See C.R. 303-304. Judge Dunn refused to perform his duties under rule 10 and correct the record. Instead he referred TELFORD to the Idaho Supreme Court for a motion to supplement the record. Justice Jim Jones long time law clerk just joined the lawfirm representing the court's defendants herein and biasly and wrongfully refused to augment these missing records into this appeal, and which formed the basis of the trial court's rulings.

Immediately after TELFORD presented her inculptory evidence against the defendants as attached to her July 18, 2011 Affidavit (see C.R. 138-145 which refers to 11 exhibits in the body of her affidavit but only three exhibits were included in the clerk's record), the Appellee's attorneys herein colluded with the Oneida County Prosecutor to conduct an illegal search and seizure on Plaintiff's home for the purpose of seizing and destroying all of Plaintiff's electronic and paper evidence against the Defendants /Appellees herein. On August 10, 2011, Oneida county executive officials led by the prosecutor, searched and seized every electronic device, electronic record and paper record located in TELFORD's home — based on a general search warrant which failed to identify any crime committed by TELFORD.

TELFORD immediately complained to Judge Dunn about the seizure of the trial records and evidence and asked for a continuance of the proceedings. C.R. 192-260. Opposing counsel objected to the continuance. As part of her application to continue, TELFORD provided a copy of her mandamus petition submitted to the criminal court demanding return of all her illegally seized civil case files and records, among other properties. C.R. 220-247. Judge Dunn did continue the summary judgment proceedings for a limited period of time. Judge Dunn subsequently made his decision on October 3, 2011 based on the filings made pre-seizure of TELFORD's property on August 10, 2011.

Judge Dunn's October 3, 2011 Decision was limited to the issue of personal jurisdiction under a contracts theory. The Decision mis-represented several facts material to Judge Dunn's contracts analysis and accordingly caused a misapplication of the law. For example, Judge Dunn found that TELFORD traveled to Texas and executed her bid contract in Texas. In fact, there were absolutely no facts in the record to support this finding or conclusion of law. TELFORD never traveled to Texas for purposes of bidding on the property in question. The record showed that unilateral contract was initiated over the internet by Smith County reaching into the state of Idaho to advertise property for sale in Texas. C.R. 343, para.6. The bid /purchase contract that TELFORD committed in writing : (1) was signed and executed in Malad Idaho (C.R. 343, para. 7) ; (2) was supported by money and loan considerations generating from Idaho lenders (see C.R. 343, para. 7; C.R. 446—447) ; (3) obligated TELFORD to commitments in the state of Idaho (C.R. 343, para. 7), and ; (4) the negotiations were the product of more than 9

phone calls, 2 faxes and 6 emails sent into the state of Idaho by the Defendants during the negotiations process. C.R. 273. para. 3.

Based on Judge Dunn's erroneous findings, Judge Dunn concluded the that contract at issue was formed in Texas. After correcting Judge Dunn's clearly erroneous findings, TELFORD set forth the relevant laws establishing the loci for the "formation of contracts" in C.R. Pages 318 – 321, and which all affirmed that Idaho was the loci where the bid acceptance contract was formed.

TELFORD also objected to the lack of any analysis under Idaho's tortious injury prong of the Idaho Long Arm Statute and any jurisdictional analysis for contacts with the state of Idaho when the elements of any crimes are committed within the state. C.R. 333—336.

On February 29, 2012, Judge Dunn issued a Decision opining personal jurisdiction under the tortious injury prong of the Idaho Long Arm Statute and the Due Process Clause. Judge Dunn refused to find personal jurisdiction in the state of Idaho because the transaction involved the purchase of real property in the State of Texas which could not be physically delivered to Telford in Idaho. C.R. 420, para. 1 :

“ If the real property [sic but] had been portable and Telford had “ taken possession of the property in Idaho, like the purchaser in *Blimka*, then the tort prong of the Idaho Long Arm Statute may have allowed this Court to exercise jurisdiction over the Defendants. However, real property is not portable. Under these circumstances the injury could only be felt in Texas.

Likewise, Judge Dunn concluded that the Due Process clause of the US Constitution barred personal jurisdiction over the defendants in Idaho because Telford could only possess the property in Texas.

Plaintiff objected to the courts order because Plaintiff was not seeking delivery of the non-portable real property to Idaho; rather Plaintiff was seeking delivery of the “portable DEED” to her in the state of Idaho. Plaintiff argued that failure to deliver that DEED created a constructive trust on the Texas property which the Idaho courts could decide pursuant to *Andre v. Morrow*, 680 P.2d, 1355, 106 Idaho 455 (ID, 1984) C.R. 394 , C.R. 395 footnote 4, and I.C. Section 29–110. 10 In addition plaintiff cited to various portable properties belonging to Idaho citizens and which were also located on the Texas property - to included heavy duty construction equipment and dump trailers.

Plaintiff urged that these “portable” properties did not align with the Court's due process analysis. Finally, plaintiff complained about the lack of any jurisdictional analysis under her RICO claims.

Remarkably, shortly after Plaintiff identified her portable properties, the Defendants removed and concealed Plaintiff's portable properties from the Texas property to avoid liability for these claims.

On March 27, 2012, Telford filed an affidavit complaining about the recent theft of her portable properties and needing to amend her complaint to include RICO claims relative to using the criminal process in the state of Idaho to extort TELFORD of her civil claims in the underlying litigation. C.R. 437-438, para(s) 7-8. Telford specifically attested :

“ I just learned that the Defendants had stolen mine and Ferron Stokes manufactured home on the property, all of our construction equipment, and our heavy duty dump trailer – based on opposing counsel's proclamation to the remainder Defendants that Oneida County was prosecuting me for 14 felony counts and that I would therefore not be able to prosecute my claims herein due to likely incarceration in jail. “

Telford argued that the Court was required to hear Telford's RICO allegations under the criminal statute providing for jurisdiction in the state of Idaho when an element of a crime is committed within this jurisdiction. See I.C. 19-302. C.R. 441. Telford complained that the Court failed to conduct any jurisdictional analysis under her RICO causes of action. Telford cited to the affidavits of Ferron Stokes and Mike Slicker C.R. 444 – 448 as containing party opponent admissions that the Texas defendants had illicitly used the criminal process in the state of Idaho as a vehicle to steal plaintiff's properties in the state of Texas as proscribed by Idaho's theft by extortion statute. C.R. 440. In particular, the Slicker affidavit presented party opponent admissions made by the KELLEY defendants (who were served with the process herein but never appeared to defend). See C.R. 444, para. 5, to wit:

“ I went over to the property with LA Greer and began asking the default “ owners what they were doing with Ms. Telford's properties. The Defaulted Owners Sandra Coleman and the Kelley Family informed us that they had beat Ms. Telford in a lawsuit in Idaho, that they now owned Ms. Telford's properties, and that Ms. Telford was going to jail for a

long time. We expressed disbelief and asked where they had removed Ms Telford's properties. They refused to tell us.

Sustaining the doctrine of Merger. In paragraph 11 @ C.R. 438 - 439, Telford further attested:

“ It is undisputed that I argued an Idaho RICO claim back in July of 2011 and that the new theft and extortion facts raised at the February 14, 2012 hearing raised additional predicate RICO acts consummated in the state of Idaho (citing fn. 5) and showed continuous racketeering activity.

C.R. 439, para. 5.

On March 28, 2012, out of a measure of precaution, the Court summarily addressed TELFORD's jurisdictional claims under the RICO statute by adopting his analysis tendered under the tortious injury prong which held that because the real proeprty in Texas was not portable to the state of Idaho, Idaho could not obtain personal jurisdiction over the defendants. C.R. 451- 452.

COMES NOW, plaintiff and presents her Statement of Issues presenting both first impression and common questions :

STATEMENT OF ISSUES

1. Whether substituted service of a summons and complaint by certified mail upon the out of state parties in the underlying case under the Idaho Consumer Protection Act's Long Arm service statute, I.C. 48-613, constituted valid service of Process on these defendants so served and commanded the entry of a defaults and default judgments as to these Defendants who failed to appear and defend.

2. Whether the commission of an illegal act as proscribed under Idaho's Consumer Practices Act section 48-603 by the out of state seller herein against TELFORD, a resident of the state of Idaho, automatically granted personal jurisdiction over the seller.

3. Whether TELFORD'S bid contract was formed in the state of Idaho sufficient to invoke personal jurisdiction over all parties to that contract : when TELFORD signed the bid contract in Malad Idaho, TELFORD committed herself to loans and other

financial obligations with Idaho lenders to provide consideration for the bid contract; and TELFORD collateralized Idaho personal and real properties to provide securities for the loans serving as consideration for the contract.

4. Whether equity claims of specific performance and constructive trust may be heard in Idaho courts when pertaining to real estate located outside the state of Idaho - when the fraud or deception practiced by the tortfeasor specifically caused the equitable claims to arise to the injury of an Idaho resident, here TELFORD.

5. Whether I.C. 19-302 may be used as a jurisdictional statute to invoke personal jurisdiction over non-resident defendants who commit in whole or in part any element of a racketeering predicate act within the state of Idaho.

6. Whether the specially appearing defendants actually made a general appearance in the underlying action because they failed to limit their initial motion to an attack on personal jurisdiction only.

7. Whether the trial court erred as a matter of law when he entered a final judgment dismissing plaintiff's claims against the specially appearing defendants with prejudice on the grounds of lack of personal jurisdiction, in violation of IRCP rule 41(b).

8. Whether the trial court erred in not allowing TELFORD to amend her complaint in accordance with the evidence presented before the conclusion of the case.

STANDARDS OF REVIEW

Jurisdiction is a question of law and is reviewed de novo. State v. Barros, 131 Idaho 379, 381, 957 P.2d 1095, 1097 (1998).

A question of law is reviewed de novo. State v. Clements, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009)

Jurisdiction for Appeal

This court has jurisdiction over this appeal pursuant to I.C. 13-201 and I.A.R. 11(7) as final judgments have been rendered in the case.

Issue No. 1

Whether substituted service of a summons and complaint by certified mail upon the out of state parties in the underlying case under the Idaho Consumer Protection Act's Long Arm service statute, I.C. 48-613, constituted valid service of Process on these defendants so served and commanded the entry of a defaults and default judgments as to these Defendants who failed to appear and defend.

Plaintiff's complaint sought as one of its primary claims, a statutory cause of action under the Idaho Consumer Protection Act. This act provides a specific long arm service statute under I.C. 48-613 as set out below :

I.C. 48-613. Service of notice. Service of any notice, demand or subpoena under this act shall be made personally within this state, ***but if such cannot be obtained, substituted service therefor may be made in the following manner:***

- (1) Personal service thereof without this state; or
- (2) The mailing thereof by registered or certified mail to the last known place of business, residence or abode within or without this state of such person for whom the same is intended; or
- (3) As to any person other than a natural person, in the manner provided in the Idaho rules of civil procedure as if a complaint which institutes a civil proceeding had been filed.

For every Defendant that plaintiff sued under this cause of action, Plaintiff exercised the substituted service provision under this statute because the Defendant could not be served with Notice of the lawsuit personally within this state - as each Defendant resided at an abode without the state. Accordingly, as admitted in each default certificate and return of Summons, each Defendant was served by certified mail to the last known place of residence or abode without this state. The original certified receipts were timely filed with the court and attached to their respective returns of Summons. C.R. 43-121.

When the served Defendant did not appear, Plaintiff filed a Request for Clerk's entry of Default and Default judgment pursuant to IRCP rules 55(a) and (b)(1) and an Affidavit in support thereof, as to each non-appearing Defendant. C.R. 43-121.

On July 18, 2011, Judge Dunn entered a Decision denying the entry of defaults and default judgments as to each non-appearing Defendant. C.R. 122-124. The basis for denying the defaults/judgments was because Plaintiff had served each

Defendant by certified mail pursuant to I.C. 48-613 (2) supra, and not personally as required under IRCP rule 55(b)(1). The court also noted that the long arm service statute did not provide for service of a summons.

TELFORD objected arguing that the long arm service statute provided for the service of NOTICE or SUBPEONA, both of which are alternative forms of a Summons. Telford also claimed that the form MOTION AND AFFIDAVIT FOR ENTRY OF DEFAULT printed on the Idaho Supreme Court's website provided the following language to enter the default of a civil defendant :

Plaintiff moves this Court for Entry of Default on the grounds that Defendant, **having (a) received notice (emphasis added)** by personal service; or (b) been served by publication, has failed to appear within the time period for answering the Complaint in the above-entitled matter. This motion is made pursuant to Rule 55(a)(1) Idaho Rules of Civil Procedure and the pleadings filed herein.

The word Summons is nowhere in the form default document. Moreover, TELFORD cited the rule that the more specific statute controls over the more general statute, here rule 4. See Farber v. Idaho State Ins. Fund, 147 Idaho 307, 313, 208 P.3d 289, 295 (2009) . Also TELFORD indicated that Judge Brown, a co ordinate court to Judge Dunn, found service by certified mail acceptable in CPA cases.

Nevertheless, there exists a conflict in the CPA long arm service statute and IRCP Rule 55(b)(1) because the latter statute provides that a default may only be taken against a defendant that defendant is personally served or served by publication. Plaintiff asks that this Court resolve the conflict in these two rules in Plaintiff's favor and entere the defaults and default judgments of each non-appearing Defendant.

Issue No.2

Whether the commission of an illegal act as proscribed under Idaho's Consumer Practices Act section 48-603 by the out of state seller against TELFORD, a resident of the state of Idaho, automatically granted personal jurisdiction over the seller.

Plaintiff could only find one case on point with foregoing service made under the state's ralted CPA statute, to wit:

State v. Reader's Digest Ass'n 81 Wn.2d 259, 501 P.2d 290 (1972) Here, Reader's Digest, was sending unsolicited sweepstakes

solicitations through the mail to Washington residents at a time when sweepstakes were prohibited by Washington law.

Reader's Digest challenged the superior court's personal jurisdiction. **On appeal, our Supreme Court reversed the superior court's dismissal, holding that "performance of an unfair trade practice in this state by a foreign corporation which has no agents, employees, offices or other property in the state, is a sufficient contact to establish jurisdiction" under the CPA's long-arm statute.** *Id.* at 276. The court also held that recognizing personal jurisdiction under the CPA "does not offend traditional notions of fair play and substantial justice, because the offender "solicit[s] Washington business . . . by methods proscribed under the act. *Id.* at 278.

Under such circumstances, it "is the duty of the state to protect its residents from such **unfair practices. If our courts are not open, the state will be without a remedy and the Consumer Protection Act will be rendered useless.**

In the instant case, plaintiff alleged the following unfair trade practices committed by the Defendants.'

I.C. 48-603. Unfair methods and practices.

The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is:

(4) Using deceptive representations or designations of geographic origin in connection with goods or services;

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have

(9) **Advertising goods or services with intent not to sell them as advertised;**

(17) **Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer.**

Furthermore in *White v. Mock*, 104 P.3d 356, 140 Idaho 882 (Idaho 2004), this court held that real estates transactions were covered under the Idaho Consumer Protection Act.

In the case at bar, the record shows that the defendant's used deceptive designations of geographic origin in connection with the original sale of property to TELFORD - leading TELFORD to believe she had purchased the Conflittis property which had qualities which were completely lacking in the real property sold to TELFORD.

While this deception may have been cured by allowing TELFORD to modify her bid to reflect the actual value of the land sold to TELFORD, the defendants subsequent actions evidenced further violations of the Act in that these defendants advertised conveyance services to plaintiff repeatedly and adnausium with intent not to sell these services as advertised. Moreover, the defendants continued to lull TELFORD into believing they would perform the required conveyance, in order to procure TELFORD to substantively improve the property so that the county could later collect additional claimed redemption fees three times greater than the previous purchase fees pad by TELFORD in the amount of \$4,217.00, and which said fees were never returned to TELFORD. Finally, there is no question that the Defendants actions as a whole both before, during and at the conclusion of the CPA litigation, were misleading, false and deceptive to TELFORD , an Idaho consumer.

Idaho following the teachings of the Montana and Oregon Supreme Courts has held that where a specific statute provides a resident with contractual remedies before the Idaho Courts, restricting those contractual remedies violates public policy. See Cerami-Kote v. Energywave Corporation, 773 P.2d 1143; 116 Idaho 56 (ID, 1989), a Consumer Protection Act case wherein Plaintiffs sued for violations under the Act and Energywave filed a motion to dismiss based upon contractual language which selected the law of Florida as the law to be applied to the contract and which designated a particular county court in Florida as the venue for the enforcement, construction, or interpretation of the contract. The Supreme Court struck down any contract provision that purported to restrict an Idaho citizen from enforcing any right under a contract subject to the CPA, in Idaho tribunals, as void against public policy set forth in the CPA and I.C. 29-110. Following State ex rel Polaris Industries v. District Court, 695 P.2d 471 (Mont.1985), and Rose v. Etling, 255 Or. 395, 467 P.2d 633 (1970), also CPA cases wherein the courts ruled that a specific statute providing for protection of the usual remedies granted to the buyer by statute could not be restricted by a venue selection clause which voided venue in the Idahocourts.)

TELFORD asserts that since the Idaho Consumer Protection Act is a specific statute providing remedies to consumers of the state of Idaho for illegal and unethical practices of sellers, that this statute on it's face provided for personal jurisdiction over

each and every defendant alleged to have engaged in a deceptive consumer practice against TELFORD.

Issue No. 3

Whether TELFORD'S bid contract was formed in the state of Idaho sufficient to invoke personal jurisdiction over all parties to that contract : when TELFORD signed the bid contract in Malad Idaho, TELFORD committed herself to loans and other financial obligations with Idaho lenders to provide consideration for the bid contract; and TELFORD collateralized Idaho personal and real properties to provide securities for the loans serving as consideration for the contract.

During the underlying proceedings, Plaintiff strenuously objected to the courts finding that the bid contract that TELFORD executed was formed in the State of Texas. Citing again to the record, the bid /purchase contract that TELFORD committed in writing : (1) was signed and executed in Malad Idaho (C.R. 343, para. 7) ; (2) was supported by money and loan considerations generating from Idaho lenders (see C.R. 343, para. 7; C.R. 446—447) ; (3) obligated TELFORD to financial commitments in the state of Idaho and collateralized TELFORD's Idaho properties (C.R. 343, para. 7), and ; (4) the negotiations were the product of more than 9 phone calls, 2 faxes and 6 emails sent into the state of Idaho by the Defendants during the negotiations process. C.R. 273. para. 3.

TELFORD provided the following laws to prove that her bid contract was formed in Idaho and therefore required adjudication in an Idaho court (C.R. 317-321) :

- (1) Under the doctrine of *lex loci contractus*, a contract is considered consummated, formed and executed where the contract is signed. See *Gates v. Collier*, 378 F.2d 888 (9th Cir. 1967) (This circuit adopts the rule of *lex loci contractus* set forth in Restatement of the law of the Conflicts of Law § 332 and which makes the law of the place where the contract is signed determine the validity, meaning and effect of an agreement.). Followed in *Yahoo Inc v. La Ligue Contre Lw Racisme Et L'Antisenitisme*, 433 F.3d 1199 (9th Cir. 2006) (. . . in contract cases, we typically inquire into whether a defendant . . . "consummate[s] [a] transaction" in the forum, focusing on activities such as delivering goods to or *executing a contract in the forum state*. See Schwarzenegger, 374 F.3d at 802.); *Pro Axess Inc. v. Orlux Distribution Inc.*, Nos. 03-4179, 03-4189 (10th Cir. 2005) (Exercising personal jurisdiction where a contract that was presented through the internet by a French defendant

was signed in Utah and committed Plaintiff to obligations in Utah in performance on the contract.).

- (2) A contract is consummated where it is reduced to writing and signed. *Ray v. Frasure*, 200 P.3d 1174, 146 Idaho 625 (ID 2009) (a contract is consummated when it is reduced to writing and signed.); See *Toivo Pottala Logging v. Boise Cascade* 733 P.2d 710; 112 Idaho 489 (Idaho 1987) (if plaintiff wished to consummate the contract to purchase, he usually must sign the standard form prepared by the manufacturer and tender consideration.); Black's Law Dictionary's two definitions for "executed contract", are: a written and signed contract, or a contract that has been fully performed. (9th ed. 2009).
- (3) Contract formation occurs when consideration is tendered to form the contract. *Mitchell v. Siqueros*, 582 P.2d 1074; 99 Idaho 396 (Idaho 1978) (Contract formation occurs when consideration is given to form the contract.); I.C. § 28-2-204, dealing with formation in general provides that "[a] contract for sale of goods may be made in any manner . . . including conduct by a party which recognizes the existence of such a contract."); *Hudson v. Cobbs*, 797 P.2d 1322; 118 Idaho 474 (ID 1990) (The contracts were formed when Hudson signed them, relying on the representations of Cobbs and Kenneville that the leases were valid contracts under which they intended to be obligated.).
- (4) Unilateral contracts are consummated where the offeree accepts the terms of the unilateral offer and performs thereunder to secure the promises in the offer. See *Evanston Insurance Company v. Westchester Surplus Lines Insurance Company*; Case No. 10-36133 (9th Cir. 10/03/2011) , the 9th circuit re - affirmed the factual circumstances under which a unilateral contract will be formed, executed and subject to enforcement. The Ninth circuit cited to Black's Law Dictionary's two definitions for "executed contract", to wit: a written and signed contract, or a contract that has been fully performed. (9th ed. 2009). Accordingly, "A unilateral contract exists when one party offers to do a certain thing in exchange for the other's performance, and performance by the other party constitutes acceptance and execution of the contract." Here, the fax from Bellevue Master to Northwest on February 22, 2001 was an offer: Northwest would be able to continue working as a subcontractor at the construction project provided it complied with Bellevue Master's insurance requirements. When Northwest contacted its insurance broker and requested that the broker issue the insurance certificate to Bellevue Master, Northwest accepted the unilateral contract, and a contract was thereby formed, executed and subject to enforcement." Idaho also concurs that a unilateral contract will be formed and executed when the offeree performs upon the terms of the offer in *Shore v. Peterson*, 204 P.3d 1114, 146 Idaho 903 (Idaho 2009) ("where the offeror makes a promise that is conditional on the offeree's acceptance, an offeree accepts by rendition of the requested performance.")

citing CORBIN ON CONTRACTS § 21 at 52 (1963) (An offer for a unilateral contract calls for acceptance by rendition of the requested performance.) J. CALAMARI and J. PERILLO, THE LAW OF CONTRACTS § 1-10 (1977). *Deer Creek, Inc. v. Clarendon Hot Springs Ranch, Inc.*, 107 Idaho 286, 291, 688 P.2d 1191, 1196 (Ct. App. 1984).

- (5) Loan obligations created in the forum state to fund contracts creates contacts in the forum state where the payments on the loans are expected to generate. *Rynone Mfg. Corp. v. Republic Indus., Inc.*, 96 S.W.3d @ 640, (Tex. App.-Texarkana 2002.) (“Calling a Texas resident in Texas to solicit a loan is a purposeful contact with Texas under a contracts analysis.”) See also *Pro Axess Inc. v. Orlux Distribution Inc.*, Nos. 03-4179, 03-4189 (10th Cir. 2005) (Exercising personal jurisdiction where a contract that was presented through the internet by a French defendant was signed in Utah and committed Plaintiff to monetary obligations in Utah in performance on the contract.); *Vreeken v. Lockwood Engineering, B.V.*, 218 P.3d 1150, 148 Idaho 89 (Idaho 2009) (loans obtained locally for business purposes result in contact with forum.) same *Hsu v. Liu*, Case no. 07-1046 (Texas Supreme Court 2007)
- (6) Phone calls, faxes, letters, and emails sent in the forum state to firm up contract negotiations or correct contract errors, are contacts with the forum. *Neal v. Janssen*, 270 F.3d 328, 332 (6th Cir. 2001) (“The acts of making phone calls and sending facsimiles into the forum, standing alone, may be sufficient to confer jurisdiction on the foreign defendant where the phone calls and faxes resulted in a consummated contract where consideration generated from the forum state.”); *Oriental Trading Co. v. Firetti*, 236 F.3d 938, 943 (8th Cir. 2001) (holding that phone calls and faxes into the forum created jurisdiction in suit based on those calls and faxes); *Taylor v. Phelan*, 912 F.2d 429, 433 n.4 (10th Cir. 1990) (“So long as it creates a substantial connection, even a single telephone call into the forum state can support jurisdiction.”); *FMC Corp. v. Varonos*, 892 F.2d 1308, 1313-14 (7th Cir. 1990) (sending allegedly false faxes to forum state created specific jurisdiction in lawsuit based on those faxes); *Brown v. Flowers Indus.*, 688 F.2d 328, 332-333 (5th Cir. 1982) (single telephone call initiated by the defendant was sufficient to confer personal jurisdiction).

None of the foregoing transactions occurred in the state of Texas and the record is devoid of any evidence competently showing otherwise. Affirming the Idaho Supreme Court in *Ray v. Frasure*, 200 P.3d 1174, 146 Idaho 625 (ID 2009) (a contract is consummated when it is reduced to writing and signed.); and *Mitchell v. Siqueros*, 582 P.2d 1074; 99 Idaho 396 (Idaho 1978) (Contract formation occurs when consideration is given to form the contract.), there can be no doubt that the contract at issue here was formed in Idaho. Moreover Plaintiff performed on the unilateral contract

in the state of Idaho and obligated herself to numerous debts to fund the transaction. Accordingly on contracts grounds, Idaho had the greatest interest in trying Plaintiff's contract claims and specific personal jurisdiction existed over the defendants .

Issue No. 4

Whether equity claims of specific performance and constructive trust may be heard in Idaho courts when pertaining to real estate located outside the state of Idaho - when the fraud or deception practiced by the tortfeasor specifically caused to the equitable claims to arise to the injury of an Idaho resident, here TELFORD.

In the instant case, Judge Dunn ruled that TELFORD could not meet the tortious injury prong of the Idaho Long Arm Statute because the transaction involved the purchase of real property in the State of Texas which could not be physically delivered to Telford in Idaho. C.R. 420, para. 1 :

“ If the real property [sic but] had been portable and Telford had “ taken possession of the property in Idaho, like the purchaser in *Blimka*, then the tort prong of the Idaho Long Arm Statute may have allowed this Court to exercise jurisdiction over the Defendants. However, real property is not portable. Under these circumstances **the injury could only be felt in Texas.**

TELFORD contends that the court erred in self fashioning the demands of Plaintiff's Complaint. Nowhere in the underlying litigation did TELFORD ask that the real property be delivered to her. On the contrary, all pleadings on file with the trial court made equitable demands of specific performance and constructive trust. C.R. 394 , C.R. 395 footnote 4.

The seminole case supporting TELFORD's contention that the trial court should have ordered SMITH county to **TURN OVER THE DEED TO TELFORD** is **Andre v. Morrow, 680 P.2d 1355; 106 Idaho 455 (Idaho 1984).**¹⁰

10. A brief analysis of that case is as follows:

Plaintiff-Respondent (Andre) brought an action in California against defendantsappellants (Morrows), Idaho residents, to impose a constructive trust on certain real property located in Idaho, *in which the Morrows held legal title and which Andre asserted they had allegedly acquired through fraud committed upon Andre's conservtee.* The California Court ruled in favor of Andre and ordered the Morrows to

As set forth in Morrow, a California court determined that Morrow, an Idaho resident, had committed fraud against a California resident and obtained title to Idaho property owned by the California resident. A constructive trust was ordered and Morrow was directed to convey title back to the California resident.

The same results should have obtained in the instant action. There is no question that fraud and deceit were practiced upon TELFORD within the meaning of Idaho's consumer Protection Act and the Idaho RICO Act. The Idaho consumer Protection Act provides for equitable relief as an additional remedy and also provides for automatic personal jurisdiction over Defendants alleged to have engaged in unfair practices. Therefore, the court could have granted TELFORD numerous requests to turn

convey the title to Andre. Andre filed a copy of the California judgment with the Clerk of the District Court for Nez Perce County, Idaho, and sought full faith and credit on the judgment. The Morrows attacked the California judgment asserting that it was not entitled to recognition because the California court lacked jurisdiction to directly affect title to property located in Idaho. This contention is error.

It is well settled that upon a finding of personal jurisdiction, a court of a foreign state can issue a personal judgment ordering a conveyance of real property by a party before that court and that this is a valid exercise of a court's power. Rozan v. Rozan, 49 Cal.2d 322, 317 P.2d 11 (1957); Idaho Gold Mining Co. v. Winchell, 6 Idaho 729, 59 P. 533 (1899); Millerv. Miller, 109 Misc.2d 982, 441 N.Y.S.2d 339 (1981); Blue River Sawmills, Ltd. v. Gates, 225 Or. 439, 358 P.2d 239 (1960); Silver Surprise, Inc. v. Sunshine Mining Co., 74 Wash.2d 519, 445 P.2d 334 (1968); 50 C.J.S. Judgments § 889 h. (1947), Lorenzen, Application of Full Faith and Credit Clause to Equitable Decrees for the Conveyance of Foreign Land, 34 Yale L.J. 591 (1925); 50 C.J.S. Judgments § 889 h. (1947). ***Courts are authorized to issue equity decrees which order an in personam conveyance of land located in another state.*** Varone v. Varone, 359 F.2d 769 (7th Cir.1966); Rozan v. Rozan, 49 Cal.2d 322, 317 P.2d 11 (1957); Ivey v. Ivey, 183 Conn. 490, 439 A.2d 425 (1981); Weesner v. Weesner, 168 Neb. 346, 95 N.W.2d 682 (1959); Higginbotham v. Higginbotham, supra; Restatement (Second) of Conflicts of Laws § 102 comment d (1971).

Here, **the California court determined that it had personal jurisdiction over the Morrows under the tortious injury prong of California's long arm statute through the fraud committed by the Morrows upon the conservatee, a California resident.** We affirm the trial court's judgment directing the Morrows to convey title in the real property to Andre. Furthermore the Morrows are to pay attorneys fees and costs.

The California Court had authority to order a constructive trust over the property assets and title where legal title to property has been obtained through actual fraud, misrepresentations, concealments, taking advantage of one's necessities, or under circumstances otherwise rendering it unconscionable for the holder of legal title to retain beneficial interest in the property. Davenport v. Burke, 30 Idaho 599, 167 P.481 (1917).

over title or pay TELFORD the market value of the improved property.

The trial Court did neither to the substantial prejudice of TELFORD.

Issue No. 5

Whether I.C. 19-302 may be used as a jurisdictional statute to invoke personal jurisdiction over non-resident defendants who commit in whole or in part any element of a racketeering predicate act within the state of Idaho.

I.C. § 19-302 has been interpreted to mean that personal jurisdiction will exist if the conduct performed outside the state caused a criminal result or effect within the state. **Personal Jurisdiction under criminal law is the loci where one element of a crime is completed.** See *Idaho v. Doyle*, 828 P.2d 1316; 121 Idaho 911 (10, 1992) (Such an interpretation is in harmony with the general rule that "the requisite elements of the completed crime may be committed in different jurisdictions, and in such cases any state in which an element of the crime is committed may take jurisdiction.n[Footnote 4121 Am.Jur.2d Criminal Law § 345 at 598 (1981); accord *Findley v. State*, 307 Ark. 53, 818 S.W> 2d 242 (1991); *State v. Lane*, 112 Wash.2d 464,771 P.2d 1150 (1989); ~tate v. Schaaf, 234 Neb. 144,449 N.W.2d 762 (1989); *State v. Poland*, 132 Ariz. Z69, 645 P.2d 784 (1982).

Furthermore, the civil racketeering act has the same rules imposed upon it as are imposed in the criminal forum, except the standard of proof is lower under the civil form. See 18-7803. Definitions. As used in this chapter, (a) "Racketeering" means any act which is chargeable or indictable under the following sections ofthe Idaho Code or which are equivalent acts chargeable or indictable as equivalent crimes under the laws of any other jurisdiction.

One such case where the criminal statute was applied in a civil contempt case to acquire personal jurisdiction over Doyle was in ***Idaho v. Doyle*, 828 P.2d 1316; 121 Idaho 911 (ID, 1992)** The facts and legal conclusion of that case were as follows:

On August 19, 1988, a complaint against Doyle was filed with the Ada County District Court for the crime of child custody interference and a warrant was issued for his arrest. Doyle was returned to Idaho for prosecution. He filed a motion to dismiss for lack of jurisdiction. Doyle argued that because neither he *nor* Cindy nor Shawn were in Idaho when

any act of withholding may have occurred, such act must have occurred in either the State of Oregon or the State of Washington. Therefore, under I.C. § 19-301, the State of Idaho was allegedly without jurisdiction to prosecute the action. The trial court denied Doyle's motion to dismiss, finding that the state did have jurisdiction under I.C. § 19-302 because the crime was consummated within Idaho.

We first note our standard of review. Subject matter jurisdiction presents a question of law over which we exercise free review. *Hanson v. State*, 121 Idaho 507, 826 P.2d 468 (1992); *Gage v. Harris*, 119 Idaho 451, 807 P.2d 1289 (Ct.App.1991). Reflecting this approach, I.C. § 18-202 sets forth Idaho's territorial jurisdiction as follows: Territorial jurisdiction over accused persons liable to punishment. --The following persons are liable to punishment under the laws of this state:

1. All persons who commit, in whole or in part, any crime within this state. This Court has stated that it must be inferred from the language of Subsection 1. of the above statute that "the legislature intended to punish any person who should commit any portion of a crime within this state to the same extent and in the same manner as though all of the acts which constitute the crime had been committed here." *State v. Sheehan*, 33 Idaho 553, 561-62, 196 P. 532, 534 (1921). States with statutes similar to I.C. § 19-302 have interpreted them to mean. that **jurisdiction will exist if the conduct performed outside the state caused a criminal result or effect within the state.** [Footnote 3] See *Wheat v. State*, 734 P.2d 1007, 1010 (Alaska Ct.App.1987) ("crime committed when results in injury in the state.");

Such an interpretation is in harmony with the general rule that the requisite elements of the completed crime may be committed in different jurisdictions, and in such cases any state in which an essential part of the crime is committed may take jurisdiction." [Footnote 4] 21 Am.Jur.2d Criminal Law § 345 at 598 (1981); accord *Findley v. State*, 307 Ark. 53, 818 S.W.2d 242 (1-991); *State v. Lane*, 112 Wash.2d 464, 771 P.2d 1150 (1989); *State v. Schaaf*, 234 Neb. 144, 449 N.W.2d 762 (1989); *State v. Poland*, 132 Ariz. 269, 645 P.2d 784 (1982). This general rule is also acknowledged in the Model Penal Code which states that a person can be prosecuted if either the conduct which is an element of the offense or the result which is an element of the injury occurs within the State." Model Penal Code § 1.03(1)(a).

Given this statutory structure, an Idaho court will have subject matter jurisdiction over a crime if any essential element of the crime, even a result, occurs within Idaho.

Under federal law 18 USC section 7803, the civil racketeering act has the same rules imposed upon it as are imposed in the criminal forum, except the standard of proof is lower under the civil form. As such, Plaintiff contends that the criminal rule for imposing personal jurisdiction over an out of state defendant equally applies to Idaho's

racketeering act.

Plaintiff's complaint charged the Defendants with the following criminal acts:

I.C. 18-2403. Theft.

- (1) A person steals property and commits theft when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.
 - (d) By false promise:
 1. A person obtains property by false promise when pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct
 - (e) By extortion :

A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

 4. Accuse some person of a crime or cause criminal charges to be instituted against him; or
 7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
 8. Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
 9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

The record shows that plaintiff complained of the foregoing conduct from the outset of the case. First, Plaintiff alleged theft by false promises over a course of 4 months until the defendants successfully stole more than \$250,000 in residential portable and non portable properties from Plaintiff.

Next Plaintiff alleged that the Defendants committed theft by extortion by engaging in the foregoing conduct that met the elements of this crime; all within the state of Idaho and by illicit abuse of Idaho public offices.

Accordingly, there is no question that jurisdiction exists in the Idaho on

Plaintiff's RICO claims contrary to the court's summary conclusion.

Issue No. 6 :

Whether the specially appearing defendants actually made a general appearance in the underlying action because they failed to limit their initial motion to an attack on personal jurisdiction only.

The record shows that the defendants made a general appearance by arguing the merits of plaintiff's substantive claims in tandem with arguing personal jurisdiction issues. C.R. 67-89. Plaintiff contends that the defendants should have stayed out of court on all of their merits argument until they sustained a ruling on personal jurisdiction only under rule 4(i). Accordingly, plaintiff contends that the defendants made a general appearance and waived the issue of personal jurisdiction.

Issue No. 7

Whether the trial court erred as a matter of law when he entered a final judgment dismissing plaintiff's claims against the specially appearing defendants with prejudice on the grounds of lack of personal jurisdiction, in violation of IRCP rule 41(b).

IRCP Rule 41(b) provides in part:

. . . Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, **other than a dismissal for lack of jurisdiction, or for failure to join a party under Rule 19**, operates as an adjudication upon the merits.

In *Scott v. Agricultural Products*, 627 P.2d 326; 102 Idaho 147 (ID 1981) : The Idaho Supreme Court affirmed that a Dismissal for lack of jurisdiction should be without prejudice under rule 41(b). The Court held that because the district court did not qualify his dismissal order, we so modify the order to be without prejudice as a dismissal under Rule 41 (b), otherwise the dismissal with prejudice will bar a subsequent action involving the same claim between the parties or their privies. *Costello v. United States*, 365 U.S. 265, 81 S.Ct. 534, 5 L.Ed.2d 551 (1961). See also *Bauscher Grain v. Nat'l Sur. Corp.*, 92 Idaho 229, 440 P.2d 349 (1968); *National Ro-Tile Corp. v. Loomis*, 82 Idaho, 65, 350 P.2d 217 (1960).

The record herein shows that on February 29, 2012, Judge Dunn entered a final judgment in this action dismissing plaintiffs claims against the specially appearing defendants with prejudice as C.R. 423-425. The entire trial record shows that the Court refused to reach any other issue or claim other than the issue of personal jurisdiction. As provided by Rule 41(b), and Scott supra, the Court was without authority to dismiss plaintiff's claims against the specially appearing defendants with prejudice and should have dismissed these claims without prejudice. TELFORD asks this court to reverse the trial court's ruling.

Issue No. 8

Whether the trial court erred in not allowing TELFORD to amend her complaint in accordance with the evidence presented before the conclusion of the case.

It is uncontested that the proceedings before the trial court were summary judgment proceedings and therefore not based solely on the initial pleading in the action. Several times during the course of the proceedings, TELFORD asked for permission to amend the complaint to add in new and additional allegations. Judge Dunn decline TELFORD's request because final judgment had been entered. C.R. 451.

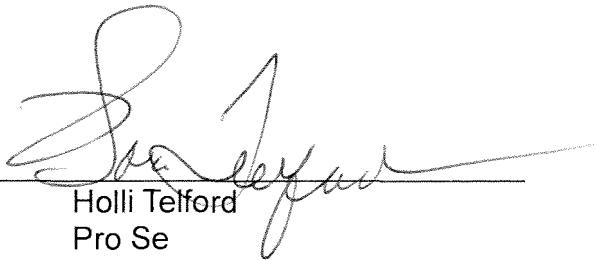
However the rules of civil procedure rule 15(b) and Thomas v. Arkoosh Produce, Inc., 137 Idaho 352, 48 P.3d 1241 (Idaho 2002) hold: I.R.C.P. 15(b) provides: Amendments to conform to the evidence. When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues **may be made upon motion of any party at any time, even after judgment;** but failure so to amend does not affect the result of the trial of these issues.

Furthermore, Thomas supra decisioned that claims not raised in the pleadings may be argued in motions to dismiss or for summary judgment. Same in Consolidated AG of Curry, Inc. v. Rangen, Inc., 128 Idaho 228, 912 P.2d 115 (Idaho 1996) (The trial court properly concluded that the issues that would allow plaintiff to recover against IFA directly were tried by 'implied consent' of IFA.)

Accordingly, plaintiff was entitled to amend her complaint as a matter of law, even after final judgment.

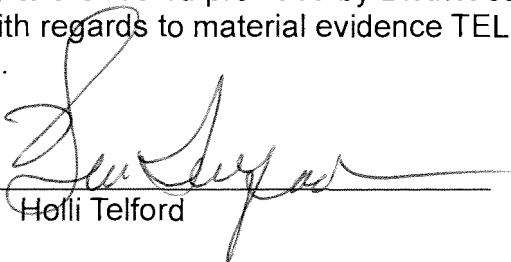
CONCLUSION

For all of the foregoing reasons, plaintiff requests that this court direct a wholesale reversal of the judgments of the trial court and hold that personal jurisdiction existed over all defendants in the underlying case; enter defaults and default judgments against every non-appearing defendant; remand plaintiff's case against the Appellees/Defendants appearing in this appeal for trial on the merits, and direct the trial court to permit plaintiff to amend her chief complaint to conform to the evidence.


Holli Telford
Pro Se

CERTIFICATE OF COMPLIANCE

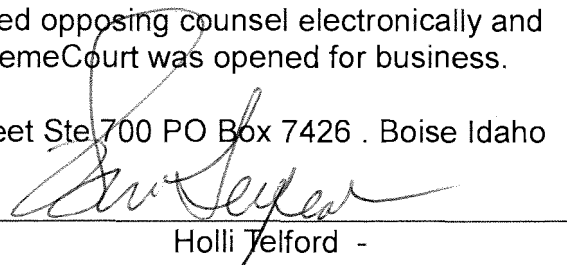
Appellant certifies that this opening brief complies with the court's page limitations in that it is 44 pages in length. Furthermore, pursuant to the instructions of the clerk of the court, plaintiff has cited solely to the record provided by District court clerk Diane Skidmore, however insufficient with regards to material evidence TELFORD provided to the district court at the time of trial.


Holli Telford

CERTIFICATE OF SERVICE

The undersigned certifies that she served opposing counsel electronically and by fax on 1-22-2012, the next day the Idaho Supreme Court was opened for business.

Brian Julian, Stephen Adams 250 South Fifth Street Ste 700 PO Box 7426 . Boise Idaho 83707 208 344-5510


Holli Telford -